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JUL 18 1989

JOSEPH F. SPANIOL, J
CLERK

NO.

89-277

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

PARMIS EVERETT - PETITIONER

vs.

SECRETARY OF THE U.S. ARMY

AND -

CORPS OF ENGINEERS

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

PARMIS EVERETT, PRO SE
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2589



QUESTIONS PRESENTED

A. CAN THE UNITED STATES ARMY LEGALLY (SEE ATTACHED TABLE OF AUTHORITIES) DEFINE WHAT IS USUAL OR UNUSUAL IN RELIGIOUS BELIEFS, AND CAN SUCH ARMY LEGALLY TAKE ACTION TO SUPPRESS SUCH BELIEFS THAT IT CLAIMS TO HAVE DETERMINED TO BE UNUSUAL?

B. IS NOT THE RESPONDENT ARMY REQUIRED TO USE WORK PERFORMANCE INSTEAD OF PRIVATELY WRITTEN FREEDOM OF INFORMATION REQUESTS IN ORDER TO FORCE RETIREMENT UPON AN EMPLOYEE?

C. IS NOT THE RESPONDENT ARMY REQUIRED TO DEFINE REASONS FOR FORCED RETIREMENT RATHER THAN TO MAINTAIN THAT UNIDENTIFIED STATEMENTS OF THE EMPLOYEE ARE "UNUSUAL", ELSE HOW CAN THE AFFECTED EMPLOYEE DEFEND HIMSELF?

D. IS NOT THE ARMY BY FUNDING OF ITS EQUAL EMPLOYMENT OPPORTUNITY OFFICES REQUIRED TO NOTIFY EMPLOYEES OF TIME LIMITATIONS FOR THE VARIOUS LEGAL INFRACTIONS THAT SUCH EMPLOYEES CHARGE TO THE ARMY AS THEIR EMPLOYER?

E. CAN THE ARMY LEGALLY ATTACH STIGMA TO AN EMPLOYEE BY DECLARING THAT ITS CLAIM OF UNUSUALNESS INDICATES A DEFINITE KONTRANSIENT MENTAL PROBLEM?



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TABLE OF AUTHORITIES

RULES AND STATUTES

TITLE VII OF PUBLIC LAW 88-352, S. 703, THE
CIVIL RIGHTS ACT

5 U.S.C. 552a(a)(7), PRIVACY ACT

5 U.S.C. 552(a) SPECIFICALLY AND 5 U.S.C. 552 IN
GENERAL

5 U.S.C. 552a(c)(2)

5 U.S.C. 552a(a)(7)

5 U.S.C. 552a(1)(1)

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SEC. 2, PUBLIC LAW 93-579(a)(1)

SEC. 2, PUBLIC LAW 93-579(b)(1)

SEC. 2, PUBLIC LAW 93-579(b)(2)

OTHER SOURCES

FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

RULE 55 OF THE FEDERAL RULES OF CIVIL PROCEDURE

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner, Parkis Everett, respectfully asks that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Fourth Circuit at Richmond, Va., with final order dated 19 April 1989.

I.

OPINION BELOW

The opinion of the Court of Appeals is attached as Appendix A. The Petition for Rehearing Order is attached as Appendix B. The opinion and order of the district court for the Southern District of West Virginia is attached as Appendix C.

II.

JURISDICTION

The final opinion of the Court of Appeals for the Fourth Circuit was filed 19 April 1989. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.

III.

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment of the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the rights of the people peaceably to assemble and to petition the Government for a redress of grievances.

IV.

STATEMENT OF FACTS

With two religious discrimination charges already filed by the petitioner against the respondent, said respondent did on 22 Dec. 1962 order this petitioner to submit to a psychiatric examination based on the respondent's claim that privately written Freedom of Information requests contained (quote) "...unusual content and subject matter..." (unquote). Also, the respondent stated (quote) "Since the problem is not of transient nature" (unquote) (partial quote of a sentence).



The order in reference was delivered in a hand-carried letter before fellow employees of this petitioner. The Freedom of Information letters in reference charged wrongful acts and management against the respondent, none of which were refuted. Despite repeated requests for a defining and identification of the claimed "unusual" portions, the respondent refused to be specific to the extent that the petitioner could defend himself. On the date of the scheduled exam, the petitioner used excused annual leave in search of a lawyer to defend him. Because the petitioner did not take the exam at the expense of excused leave, the respondent asked the Office of Personnel Management to force the petitioner into involuntary retirement. The petition^{er} was forced to live under this threat for approximately eight months until OPM refused the respondent's request for ouster of the petitioner. The petitioner's religious beliefs require him not to lie; the respondent's regulations require upholding the Congressional Code of Ethics, which code requires the petitioner to report fraud,



waste and mismanagement wherever found; therefore, the petitioner must in obedience to religion and affirmation of office continue to report instances such as in the letters to which the respondent has objected. And since the respondent has continued to maintain that it acted justifiably in its ouster attempt, the petitioner is forced daily on the job to work with dismissal threat made to hang in the balance. Throughout all the years of such threat, the petitioner has continued to perform conscientiously on the job, and has been rated as exceeding the requirements for the job. But he is doing the work formerly done by a GS-12 for GS-06 pay, work that could bode disaster for thousands behind water containment structures if such work were not properly done.

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE BOUNDARIES OF THE LAWS IN REFERENCE.

The district court of Southern West Virginia

in its "Memorandum Opinion and Order" seeks to determine that the Freedom of Information letters were unusual as charged, but such establishment is beside the point, for all citizens have a freedom to have unusual religious beliefs of legal nature, and they all have a freedom to express such unusual beliefs in Freedom of Information requests that contain charges of undisputed wrongful actions by the respondent.

E. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO ASSIST CONGRESS IN ITS EFFORTS TO CURB WASTE, FRAUD, AND MISMANAGEMENT IN THE DEFENSE DEPARTMENT.

The expenditure of funds for offices to assist "whistle-blowers" is manifestation of the concern that the tremendous benefits of employee reportings not be lost to this Nation by Defense Department management.

F. THIS CASE PROVIDES THE COURT WITH AN OPPORTUNITY TO DELINEATE THE BOUNDARIES OF RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE.



When this petitioner went to district court as the Equal Employment Opportunity Commission required, he filed the charges against the U. S. Army Corps of Engineers; but when the E.E.O.C. revised its "Notice of Right To File A Civil Action" to state (quote) ". . . YOU MUST NAME THE APPROPRIATE OFFICIAL AGENCY OR DEPARTMENT HEAD AS THE DEFENDANT." (unquote), said petitioner then amended the charges to include the Secretary of the United States Army. When the respondent failed to respond to the charges against this official, the petitioner filed for default judgment without response known to have been furnished by the court.

VI.

CONCLUSION

This case presents an important constitutional issue; and without reversal of lower courts' decision, multiple freedoms of religion, privacy, and information are dangerously eroded. Also, the Nation loses valuable in-house reportings of fraud, waste, and mismanagement. By rejection of this



petition, the Army would be given a mandate to both censor and censure those given religious and moral requirements to obey conscience and affirmations and oaths of Federal employment. Such refusal of the petition could greatly add to the case load of this court in the future. The case itself is simple to the extent that the one psychiatris exam order in reference is explicit enough and incriminating enough to use for summary judgment to this petitioner. This petitioner is including such ~~letter~~ among the evidence that he is requesting for certification to this court. Oral argument is not requested.

Respectfully submitted,



Parks Everett, Pro Se
P. O. Box 184
S. Point, Ohio 45680

Dated: 16 July 1989



UNITED STATES COURT OF APPEALS

For The Fourth Circuit

No. 38-2155

PARKIS EVERETT

Plaintiff - Appellant

v.

U.S. ARMY CORPS OF ENGINEERS

Defendant - Appellee

Appeal from the United States District Court for
the Southern District of West Virginia, at Hun-
tington. Charles H. Haden, II, Chief District
Judge. (C/A No. 36-1214)

No. 38-2135

PARKIS EVERETT

Plaintiff - Appellant

v.

SECRETARY OF THE ARMY;

UNITED STATES ARMY

Defendants - Appellees

Appeal from the United States District Court
for the Southern District of West Virginia, at
Huntington. Robert J. Staker, District Judge.
(C/A No. 87-570)

Submitted: February 10, 1989

Decided: March 28, 1989

Before ERVIN, Chief Judge, and SPROUSE,
and WILKINS, Circuit Judges.

Parkis Everett, Appellant Pro Se. Kurt
Ewing Entsminger (OFFICE OF THE UNITED
STATES ATTORNEY) for Appellees.



PER CURIAM:

Parkis Everett appeals from two orders of the district court dismissing as without merit his claims of religious discrimination, 42 U.S.C. § 2000e-16, and of violations of the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Our review of the record and the district court's opinions discloses that these appeals are without merit. Accordingly, we affirm on the reasoning of the district court.* Everett v. United States Army Corps of Engineers, C/A No. 86-1214 (S.D.W. Va. June 9, 1988; Everett v. Secretary of the Army, C/A No. 87-570 (S.D.W. Va. July 11, 1988)). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED



*Everett's contentions that the district judge was prejudiced are without merit. For alleged bias and prejudice to be disqualifying, it must stem from an extrajudicial source, and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. See United States v. Grinnell Corp., 384 U.S. 563, 583 (1966); In re Beard, 811 F.2d 818, 827 (4th Cir. 1987).



UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2155

FILED

APR 19, 1989

U.S. C.APP.

4th Circuit

PARKIS EVERETT Plaintiff - Appellant

v.

UNITED STATES ARMY CORPS OF ENGINEERS

Defendant - Appellee

No. 88-2135

PARKIS EVERETT Plaintiff - Appellant

v.

SECRETARY OF THE ARMY; U.S. ARMY

Defendants - Appellees

On Petition for Rehearing with Suggestion
for Rehearing In Banc

O R D E R

The appellant's petition for rehearing and suggestion for rehearing in banc, and motion for leave to file petition out of time were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the motion for leave to file petition out of time is granted and the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Ervin with the concurrence of Judge Sprouse and Judge Wilkins.

For the Court,

JOHN M. GREACEN
(CLERK)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

PARKIS EVERETT,

Plaintiff,

C. A. NO. 3:86-1214

vs.

UNITED STATES ARMY CORPS OF ENGINEERS,
Defendant.

MEMORANDUM OPINION AND ORDER

Pending in this action is the motion of the Defendant to dismiss. The Defendant included an affidavit with its motion. Consequently, the Court gave notice to the parties that it would consider the motion as made pursuant to Rule 55 of the Federal Rules of Civil Procedure. Also, the Court advised the pro se Plaintiff of his right to respond to the Defendant's motion. The Plaintiff has submitted a "Response" and the Court deems the motion mature for consideration.

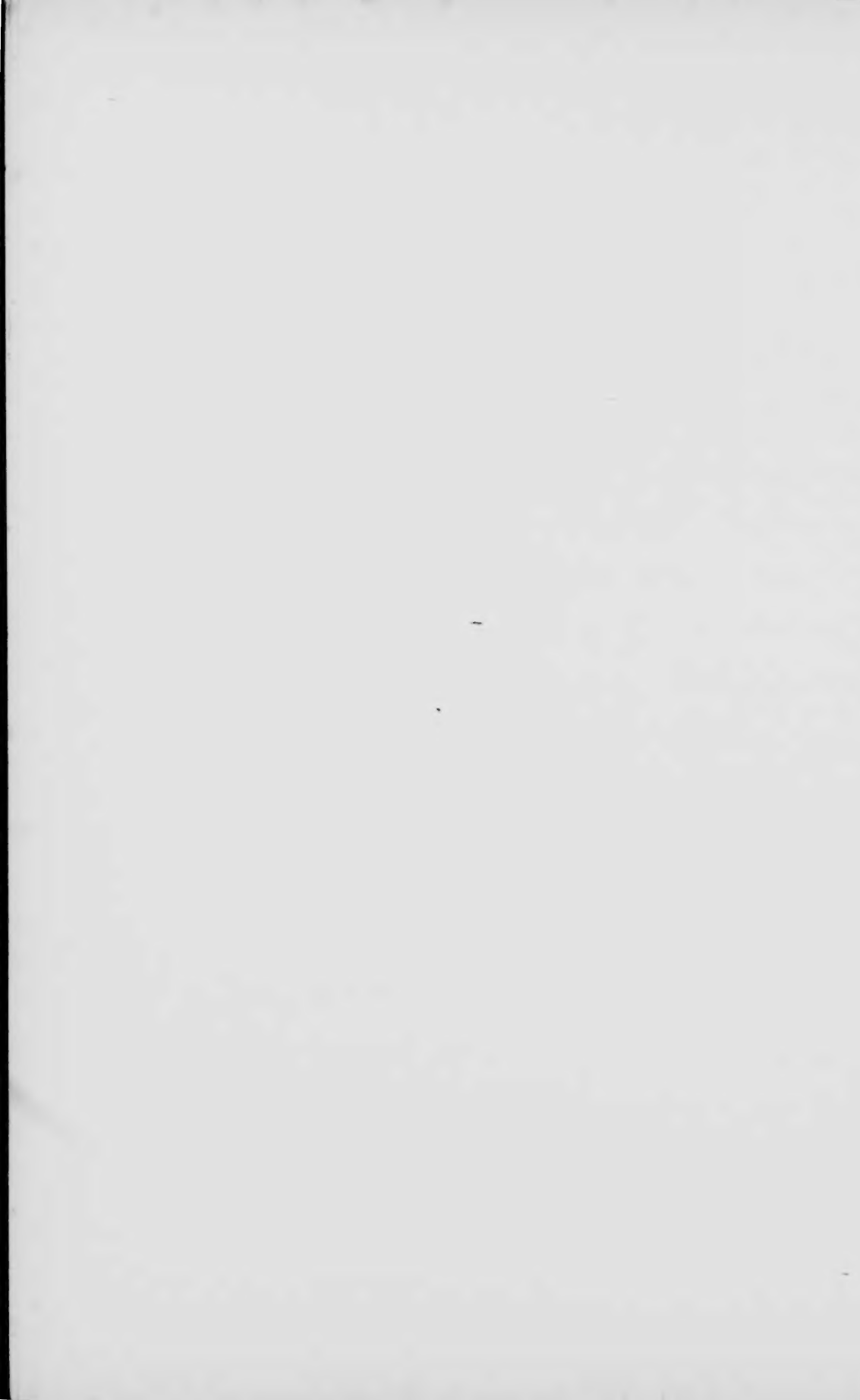


As best the Court can determine, the Plaintiff asserts three claims in his pro se complaint: First, that the Defendant unlawfully discriminated against him on the basis of his religious beliefs in violation of 42 U.S.C. §2000e and the First Amendment; second, that the Defendant violated his rights under the Privacy Act, 5 U.S.C. § 552(a); and, third, that the Defendant violated the "intent" of the Freedom of Information Act. The Court has reviewed the Plaintiff's complaint and his voluminous and irrelevant filings made in support of his complaint and in opposition to the Defendant's motion. Based upon such review, the Court finds the Plaintiff's complaint to be frivolous and unmeritorious.

The Plaintiff essentially is complaining about action taken by the Defendant, his employer, in 1982. The Plaintiff wrote several letters to his immediate supervisors. Concerned about their safety and the mental

well-being of the Plaintiff, they sought professional advice on whether the Plaintiff should be evaluated. A psychiatrist and psychologist, after reviewing the letters, recommended that the Plaintiff receive psychiatric treatment. The Plaintiff was then instructed to undergo a psychiatric evaluation. Apparently this evaluation was never completed. The record also indicates that no other action was taken against the Plaintiff and that he continues in the employ of the Defendant.

The Plaintiff's complaint simply does not state a claim upon which relief can be granted. It goes beyond the pale for the Plaintiff to suggest that the Defendant's action in 1982 was motivated by religious animus. Rather, it appears that the Defendant's action was justifiable given the peculiar nature of the Plaintiff's writing -- peculiarity which has been repeated in this



litigation for the court's benefit. Moreover, the Plaintiff does not have a cause of action under the Privacy Act or the Freedom of Information Act. Further discussion is not warranted.

The Plaintiff has filed an "Affidavit of Prejudice and Bias" wherein he requests that the Court recuse itself or grant him summary judgment. This filing is without merit. The Court denies the request for recusal. The Court discerns no bias or prejudice on its part in this matter. To the extent that the Plaintiff moves for summary judgment, the Court denies the motion.

For the foregoing reasons, and for those stated more extensively in the Defendant's well-written brief, the Court grants the Defendant's motion to dismiss.

The Clerk is directed to send a certified copy of this Memorandum Opinion and Order to counsel of record and to the pro se plaintiff.

ENTER: June 9, 1988

(Signed)

Charles H. Haden II, Chief Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

PARKIS EVERETT,

Plaintiff,

vs.

C. A. NO.: 3:86-1214

UNITED STATES ARMY CORPS
OF ENGINEERS,

Defendant.

JUDGMENT ORDER

In accordance with the Memorandum Opinion and Order entered on this date, the Court hereby **ORDERS** as follows:

1. That the motion of the Defendant to dismiss is granted.
2. That the Plaintiff's complaint is dismissed without prejudice; and
3. That the Clerk shall remove this action from the docket of the Court.

The Clerk is directed to send a certified copy of this Judgment Order to counsel

of record and to the pro se Plaintiff.

ENTER: June 9, 1989

(Signed)

Charles H. Haden II, Chief Judge